IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1848 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 & 2 Yes : 3 to 5 No

MUNICIPAL CORPORATION

Versus

GOPALBHAI DHULABHAI PATEL

Appearance:
MR PRANAV G DESAI for Petitioner
MR JITENDRA M PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

Date of decision: 14/09/98

ORAL JUDGEMENT

1. The Municipal Corporation,City of Baroda had proposed the acquisition of the land of S.No.585 Paiki

admeasuring 0.25 H.A. 48 Sq.Mts. and S.No.579/1 Paiki admeasuring 0.05 H.A. 6 Sq.mtrs. situated at the sim of village Vadgar,Taluka Baroda. The acquisiton was for construction of ring road of the Municipal Corporation. For this purpose Notification under S.4 of the Land Acquisition Act was issued on 25.12.75 and taking it to be a case of emergency acqusition of the land, a notice under S.6 of the Act was also issued on the same day i.e. 25.12.75. The possession of the land had been taken on 25.2.76 and notices were then served upon the respondent under S.9. The Special Land Acquisiton Officer, after considering the objections, etc, gave the Award as required under S.11 of the Land Acquisition Act on 25.10.78, awarding an amount of Rs.18,348/- to the respondent. The respondent being aggrieved from the Award filed Reference under S.18 of the Land Acquisiton Act for getting further compensation of the additional amount of Rs.30,072/- and also for an amount of solatium for Rs.4512/- and interest from the date of the acquisiton of the land and taking over the possession of the land i.e. a sum of Rs.4280/-. The respondent in all claimed Rs.38,864/-. This Reference was registred with the 4th Extra Assistant Judge, Baroda as Land Reference Case No.2 of 1979 and in this Land Reference Case No.2 of 1979 The Municipal Corporation, City of Baorda was opponent No.2 and it opposed the claim for additional compensation. The 4th Extra Assistant Judge, Baroda decreed the above Reference No.2 of 1979 and ordered for the payment of the additional amount of Rs.38,864/- with running interest at the rate of 12% per annum from the date of the possession of the land i.e. 25.2.76 and passed the Award on 31.1.83. It appears that subsequent to the passing of the order dated 31.1.83 Land Reference Darkhast No.3 of 1983 was entertained on 17.6.83 and an order of payment of aditional compensation of Rs.38,864/with interst at the rate of 12% per annum and cost of the award amounting to Rs.78,714-12 Ps. was passed. This amount was deposited in the District Court on 26.3.84 and on 25.6.86 additional amount of Rs.1250.32 Ps. was also deposited in the District Court. Later on the respondent i.e. Gopalbhai Dhulabhai Patel filed an application in the court of Extra Assistant Judge, which was registered as Land Reference Misc. Application No.79 of 1985. Through this Application, the respondent claimed additional 15% solatium and interest as per the amendment of the Land Acquisition Act. In this Land Reference Misc. Application No.79 of 1985 the present petitioner i.e. Municipal Corportion of the City of Baroda was not impleaded as a party although it was a party in the proceedings in which the order dated 31.1.83 had been passed and the order with regard to the

additional amount had been passed. This Land Reference Misc. Application No.79 of 1985 has been decided and allowed on 31.3.90 by the Extra Assistant Judge, Baroda holding that the applicant was still entitled to recover Rs.43,376/- from the opponents instead of the amount mentioned in the Award in the above Land Reference Case. It was further ordered that the applicant was also entitled to interest at the rate of 9% per annum for the first year from the date of the taking over possession of the land in question and at the rate of 15% for the subsequent years till realisation, instead of the running interest at the rate of 12% per annum. It was also ordered that the necessary corrections in terms of this order be made in the original order and the Award in Land Reference Case No.2 of 1979.

2. Aggrieved from this order dated 31.3.90 passed by the Extra Assistant Judge, Baroda in Land Reference Misc. Application No.79 of 1985, this Special Civil Application has been filed by the Municipal Corporation of the City of Baroda.

3. We have heard learned counsel for both the sides. There is no dispute about the factual position that the petitioner - Corporation was a party in the original proceedings, but was not impleaded as a party in the Land Reference Misc. Application No.79 of 1985 and the impugned order dated 31.3.90 was passed without hearing the Municipal Corporation of the City of Baroda and the order certainly goes to the prejudice of the Municipal Corporation. This order, therefore, deserves to be set aside on this ground alone and the matter could be remanded back for consideration after hearing the Municipal Corporation of the City of Baroda as was done earlier by this Court while passing an order dated 30.8.90 in Special Civil Application No.1136 of 1987. However, Mr. Desai has invited our attention to the latest decision of the Supreme Court in the case of Bai Shakriben v. Special Land Acquisition Officer reported in (1996) 4 SCC 533 and Union of India v. Swaran Singh, reported in (1996) 5 SCC 501. In the aforesaid cases, the Supreme Court has taken the view that once the Reference Court has granted an award and decree, then the Award and the Judgment under S.26(2) of the Act or on Appeal under S.54, the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree and that the executing court had only to award benefits under Sections 23(1-A), 23(2) and 28 of the Act. We find that in the instant case there was no question of any correction or clerical or arithmetical mistake in the original decree

and order. In fact, the author of the impugned order, in the body of the order dated 31.3.90 has himself mentioned that this order was required to be passed in view of the amendment in the Land Acquisition Act. However, the fact remains that such Misc. Applications, for the passing of the order by the Reference Court, are not maintainable before the Reference Court itself for the purpose of claiming benefits under the amended provisions; whether the question of giving benefit under these amended provisions was considered by the Reference Court earlier or not. If at all such benefit is not considered and granted by the Reference Court, it is open for any party to avail the remedy before the next higher court in accordance with law, but the original order or decree passed by the Reference Court cannot be sought to be modified for the purpose of seeking increase in the amount on account of the amended provisions. It is clearly discernible from the aforesaid decisions of the Supreme Court that such Misc. Applications, after the order is passed by the Reference Court, are not maintainable and the orders passed in such non maintainable applications are without jurisdiction and they amount to nullity.

In this view of the legal position, we find that the remanding of the matter, on the ground that the Municipal Corporation of the City of Baroda was not a party, is going to serve no useful purpose and whereas we find that the Misc. Application No.79 of 1985 itself was not maintainable and the impugned award dated 31.3.90 is an order without jurisdiction and amounts to nullity, the same cannot be sustained in the eye of law.

The upshot of the aforesaid adjudication is that this Special Civil Application succeeds. The impugned order dated 31.3.90 passed by the Extra Assistant Judge in Land Reference Misc. Application No.79 of 1985 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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